

**FIRST AMENDMENT TO AGREEMENT
PROVIDING FOR IMPLEMENTATION
OF
THE SANTA CLARA VALLEY
URBAN RUNOFF POLLUTION PREVENTION PROGRAM**

This first amendment to Agreement providing for implementation of the Santa Clara Valley Urban Runoff Pollution Prevention Program (THE "Amendment") is entered into by and between the SANTA CLARA VALLEY WATER DISTRICT, a local public agency of the State of California ("District"); CITY OF CAMPBELL, a municipal corporation of the State of California; CITY OF CUPERTINO, a municipal corporation of the State of California; CITY OF LOS ALTOS, a municipal corporation of the State of California; TOWN OF LOS ALTOS HILLS, a municipal corporation of the State of California; TOWN OF LOS GATOS, a municipal corporation of the State of California; CITY OF MILPITAS, a municipal corporation of the State of California; CITY OF MONTE SERENO, a municipal corporation of the State of California; CITY OF MOUNTAIN VIEW, a municipal corporation of the State of California; CITY OF PALO ALTO, a municipal corporation of the State of California; CITY OF SARATOGA, a municipal corporation of the State of California; CITY OF SAN JOSE, a municipal corporation of the State of California; CITY OF SANTA CLARA, a municipal corporation of the State of California; CITY OF SUNNYVALE, a municipal corporation of the State of California; and COUNTY OF SANTA CLARA, a municipal corporation of the State of California.

All of the above mentioned entities are hereinafter collectively referred to as "Parties" or individually as "Party."

RECITALS

- A. The Parties previously entered into that certain Agreement Providing For Implementation of the Santa Clara Valley Urban Runoff Pollution Prevention Program (the "Agreement" or "MOA") pursuant to which the Parties established certain terms and conditions relating to the implementation and oversight of the Santa Clara Valley Urban Runoff Pollution Prevention Program (the "Program"). A copy of the agreement is attached hereto as Appendix A. Unless otherwise set forth herein, all terms shall have the meaning set forth in the Agreement;
- B. The Agreement provided for a five-year term, which, based on its execution, is currently set to conclude on or about March 10, 2005;
- C. The Parties expect to utilize the Program to submit a reapplication for the NPDES Permit in early 2005 and to otherwise address a variety of matters related to assisting the Parties in effectuating compliance with the Permit after March 10, 2005;
- D. The Parties therefore desire to extend the term of the MOA as set forth below;
- E. Section 7.02 of the MOA provides that it may be amended by the unanimous written agreement of the Parties and that all Parties agree to bring any proposed amendments to their Council or Board, as applicable, within three (3) months following acceptance by the Management Committee; and

NOW, THEREFORE, THE PARTIES HERETO FURTHER AGREE AS FOLLOWS:

Section 6.

Section 6.02 of the Agreement is hereby amended as follows:

6.02.01 This Agreement shall continue in full force and effect for an additional one year beyond its original termination date of March 10, 2005, unless otherwise terminated by the Parties in accordance with Section 6.03.

Section 2.

Section 2.04 of the Agreement is hereby amended as follows:

2.04.01 The Program shall conduct an independent review by December 31, 2005 to evaluate the MOA's cost allocation formula and evaluate the term, scope and cost of the Program MOA.

IN WITNESS WHEREOF, The Parties have executed this Amendment effective as of March 10, 2005.

Santa Clara Valley Water District: By: Stanley M. Williams
Name: Stanley M. Williams
Title: CBO
Date: 2/18/05

County of Santa Clara: By: _____
Name: _____
Title: _____
Date: _____

City of _____: By: _____
Name: _____
Title: _____
Date: _____

APPENDIX A

AGREEMENT PROVIDING FOR IMPLEMENTATION OF THE SANTA CLARA VALLEY URBAN RUNOFF POLLUTION PREVENTION PROGRAM

THIS AGREEMENT, is made and entered into this 17th day of December 1999, by and between the SANTA CLARA VALLEY WATER DISTRICT (DISTRICT), a local public agency of the State of California; COUNTY OF SANTA CLARA, a political subdivision of the State of California; CITY OF CAMPBELL, a municipal corporation of the State of California; CITY OF CUPERTINO, a municipal corporation of the State of California; CITY OF LOS ALTOS, a municipal corporation of the State of California; TOWN OF LOS ALTOS HILLS, a municipal corporation of the State of California; TOWN OF LOS GATOS, a municipal corporation of the State of California; CITY OF MILPITAS, a municipal corporation of the State of California; CITY OF MONTE SERENO, a municipal corporation of the State of California; CITY OF MOUNTAIN VIEW, a municipal corporation of the State of California; CITY OF PALO ALTO, a municipal corporation of the State of California; CITY OF SAN JOSE, a municipal corporation of the State of California; CITY OF SANTA CLARA, a municipal corporation of the State of California; CITY OF SARATOGA, a municipal corporation of the State of California; and CITY OF SUNNYVALE, a municipal corporation of the State of California.

All of the above-mentioned entities are hereinafter collectively referred to as "PARTIES" or individually as "PARTY."

RECITALS:

- A. The 1986 Water Quality Control Plan for the San Francisco Bay (Basin Plan), adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, in implementation of the Federal Clean Water Act, required that PARTIES develop a program to control pollution from urban runoff, or nonpoint sources of water pollution in the Santa Clara Valley.
- B. In furtherance of their responsibilities pursuant to the Basin Plan, the PARTIES have previously entered into a series of agreements to jointly fund the cost of preparing an action plan to evaluate nonpoint source pollutants, monitor identified pollutants, and develop control measures to mitigate or reduce nonpoint source pollution. Collectively, the measures undertaken pursuant to the previous agreements and anticipated to continue pursuant to this Agreement, were known as the Santa Clara Valley Nonpoint Source Pollution Control Program and upon execution of this agreement henceforth shall be known as the Santa Clara Valley Urban Runoff Pollution Prevention Program (hereinafter called "Program").
- C. In 1987 Congress added Section 402 (p) to the Federal Clean Water Act (CWA) (33 U.S.C. Section 1342 (p)), which requires certain municipalities and industrial facilities to obtain a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of stormwater to navigable waters. NPDES permits are also required under Section 402 (p) for any stormwater discharge which the Federal Environmental Protection Agency (EPA) or a State has determined contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.
- D. Section 402 (p) further required EPA to promulgate regulations for initial NPDES permit applications for stormwater discharges. The EPA promulgated such regulations in November 1990.

NOW, THEREFORE, THE PARTIES HERETO FURTHER AGREE, AS FOLLOWS:

Section 1. Santa Clara Valley Urban Runoff Pollution Prevention Program

1.01 The Santa Clara Valley Nonpoint Source Pollution Control Program ("Program") is hereby continued as the Santa Clara Valley Urban Runoff Pollution Prevention Program to fulfill the requirements of NPDES Permit No. CAS029718 as it exists, may be modified, or may be reissued in the future (hereinafter referred to as "NPDES Permit").

1.02 The Program is a collective effort and implementation of area-wide activities, designed to benefit all PARTIES.

Section 2. Management Committee

2.01 A Management Committee is hereby reconstituted to provide for overall Program coordination, review, and budget oversight, with respect to the NPDES Permit.

2.02 The Management Committee may as necessary adopt and revise Bylaws for its governance.

2.03 The Management Committee is the official management and oversight body of the Program. The Management Committee shall direct and guide the Program and review and approve the Program Budget. The Management Committee shall consider permit compliance, including benefit to a majority of the PARTIES, as a primary objective in approving Program tasks and corresponding budgets.

2.04 The Management Committee may periodically re-evaluate and make recommendations to the PARTIES concerning reallocation of the proportion of the annual Program contribution that each PARTY shall pay.

2.05 The voting membership of the Management Committee shall consist of one designated voting representative from each PARTY. An alternative voting representative may be appointed by each PARTY. The RWQCB-SFBR may appoint a non-voting representative and alternate to the Management Committee.

2.06 A quorum of the Management Committee shall be achieved when at least nine (9) voting representatives, including at least one (1) representative from each of City of San Jose and Santa Clara Valley Water District, are present at any Management Committee meeting.

2.07 Meetings of the Management Committee, including any closed sessions with Program Legal Counsel, shall be conducted in accordance with the "Brown Act" (Government Code Section 54950 et seq.) The individual parties have differing opinions on whether the Brown Act legally should be interpreted as applying to members of the Management Committee. In executing this Agreement, the parties do not waive their right to take the position that the Brown Act legally does not apply, but voluntarily agree to follow Brown Act procedures for Management Committee meetings. Except for official meetings of the Management Committee, nothing herein shall be interpreted to require meetings between staff members of the individual Parties (including designated representatives of the Parties) to be subject to the Brown Act, where the Brown Act would not otherwise apply. Each party is individually responsible for ensuring that it complies with the Brown Act.

3.03 Except as provided in Section 6.03, the ending fund balance at the close of each fiscal year shall be disbursed annually to the PARTIES, or credited to the PARTIES' share of the next fiscal year's costs, in accordance with the PARTIES defined participation rates, as requested by each PARTY.

Section 4. Contracting/ Fiscal Agent

4.01 DISTRICT shall serve as the initial Contracting/Fiscal Agent for the Program.

4.02 DISTRICT may withdraw as the Contracting Fiscal Agent upon the provision of ninety days (90) days written notice to the Management Committee.

4.03 In the event that the Contracting/Fiscal Agent withdraws from the Program or from providing Contracting/Fiscal Agent services to the Program, another PARTY may serve as a successor Contracting/Fiscal Agent. Any PARTY willing to serve as successor Contracting/Fiscal Agent may be nominated by another PARTY. Selection of a Contracting/Fiscal Agent must be by majority vote of the Management Committee.

4.04 The Contracting/Fiscal Agent shall act in a reasonable amount of time to execute contracts with Outside Contractors, including the Program Manager, which have been requested and approved by the Management Committee.

4.05 The Contracting/Fiscal Agent shall be the treasurer of Program funds. The Contracting/Fiscal Agent, in accordance with generally accepted accounting procedures, shall keep the Program funds segregated from any other funds administered by the Contracting/Fiscal Agent; shall credit the Program with appropriate interest income earned on Program funds in each fiscal year; and shall not expend any funds except in accordance with the annual budget approved by the Management Committee or as otherwise directed by the Management Committee.

4.06 The Contracting/Fiscal Agent shall provide a copy of any contract executed on behalf of the Program to any PARTY or person designated by any PARTY or the Management Committee upon request. The governing body of the Contracting/Fiscal Agent, at its discretion, may delegate authority to execute agreements and contracts approved by the Management Committee, to a designated employee. Notice of any such delegation of authority shall be provided to the Management Committee.

4.07 The Contracting/Fiscal Agent may request, as part of the annual Program Budget, reimbursement for reasonable and customary costs incurred in providing the services described hereunder. Reimbursement to the Contracting/Fiscal Agent shall be subject to Management Committee review and approval as part of the Program Budget.

Section 5. Ancillary Rights and Duties of the Parties

5.01 In addition to the participation in the Management Committee, the PARTIES accept and agree to perform the following duties:

1. Each will comply with the NPDES Permit conditions set forth in its Community-Specific plan;
2. Each will participate in Management Committee meetings and other required meetings of the PARTIES;

7.04 No PARTY shall, by entering into this Agreement, participating in the Management Committee, or agreeing to serve as Fiscal Agent, Contracting Agent, Program Manager, and/or Legal Counsel, assume or be deemed to assume responsibility for any other PARTY in complying with the requirements of the NPDES Permit. This Agreement is intended solely for the convenience and benefit of the PARTIES hereto and shall not be deemed to be for the benefit of any third party and may not be enforced by any third party, including, but not limited to, the EPA, the SWRCB, and the RWQCB-SFBR, or any person acting on their behalf or in their stead.

7.05 In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the PARTIES agree that all losses or liabilities incurred by a PARTY shall not be shared pro rata but instead the PARTIES agree that pursuant to the Government Code Section 895.4, each of the PARTIES hereto shall fully defend, indemnify and hold harmless each of the other PARTIES from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts of omissions or willful misconduct of the indemnifying PARTY, its officers agents or employees, under or in connection with or arising from any work, authority or jurisdictions delegated to such PARTY under this Agreement, including but not limited to any non-compliance by a PARTY with its obligations under the Program NPDES Permit. No PARTY, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability incurred by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents under or in connection with or arising from any work, authority or jurisdictions delegated to such PARTY under this Agreement, including but not limited to any non-compliance by a PARTY with its obligations under the Program NPDES Permit.

7.06 In the event that suit shall be brought by either party to this contract, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the dates shown below.

SANTA CLARA VALLEY WATER DISTRICT, a body corporate and politic of the State of California

Date: _____

APPROVED AS TO FORM:

By: _____
Chair, Board of Directors

By: _____
General Counsel

ATTEST:

By: _____
General Manager

Date:

By: _____

CITY OF _____

Date: _____

By: _____
Name : _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name : _____
Title: _____

CITY OF _____

Date: _____

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CITY OF _____

Date: _____

By: _____
Name : _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name : _____
Title: _____

EXHIBIT A

SANTA CLARA VALLEY URBAN RUNOFF POLLUTION PREVENTION PROGRAM SCHEDULE OF COST-SHARING PROPORTIONS

<u>Jurisdiction</u>	<u>Proportional Share</u>
Campbell	1.88%
Cupertino	2.46%
Los Altos	1.59%
Los Altos Hills	0.43%
Los Gatos	1.74%
Milpitas	2.75%
Monte Sereno	0.14%
Mountain View	3.91%
Palo Alto	4.06%
Santa Clara	6.23%
Saratoga	1.59%
Sunnyvale	7.25%
Santa Clara County	5.94%
Subtotal	39.97%
San Jose	30.01%
District	30.02%
TOTAL	100.00%